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A SUBMISSION TO
THE ROYAL COMMISSION ON
THE WORKMEN'S COMPENSATION ACT
OF ONTARIO

BY

THE ONTARIO FEDERATION OF CONSTRUCTION ASSOCIATIONS
86 Overlea Boulevard, Toronto 17, Ontario

AUGUST 16th, 1966



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ONTARIO FEDERATION OF CONSTRUCTION ASSOCIATIONS

86 OVERLEA BOULEVARD TORONTO 17, ONT. TEL. NO.: 425-5808-9

August 16th, 1966

The Hon. Mr. Justice George A. McGillivray,
Commissioner, The Royal Commission on
The Workmen's Compensation Act of Ontario,
Box 202,
Parliament Buildings,
TORONTO 2, Ontario.

Dear Mr. Commissioner:

The Ontario Federation of Construction Associations appreciates the opportunity of presenting this brief on aspects of workmen's compensation as it affects the construction industry in Ontario. The Ontario Federation of Construction Associations, which is affiliated with the Canadian Construction Association, a national body representing construction interests federally, is representative of the following organizations which make up the Federation:-

Air Conditioning & Refrigeration Contractors Association of Ontario
Canadian Institute of Steel Construction
Canadian Plumbing & Mechanical Contractors Ass'n (Ontario Branch)
Construction Safety Association of Ontario
Contracting Lathing & Plastering Association of Ontario Inc.
Electrical Contractors Association of Ontario
Hamilton Construction Association
Kingston Builders Exchange
Kitchener-Waterloo Construction Association
Lakehead Builders Exchange
London & District Construction Association
Master Insulators Association of Ontario
Metropolitan Toronto Sewer & Watermain Contractors Association
Niagara Peninsula Builders Exchange
Ontario Concrete Block Association

Ontario General Contractors Association
Ontario Industrial Roofing Contractors Association
Oshawa & District Construction Exchange
Ottawa Builders Exchange
Peterborough District Construction Exchange
Quinte Construction Association
Ready Mixed Concrete Association of Ontario
Sault Ste. Marie Builders Exchange
Sudbury Builders Exchange
Toronto Construction Association
Windsor Construction Association

We respectfully include for your information, under Appendix "A", a description of the size, scope, nature, and importance of the construction industry in Ontario. We do this in order to provide a full appreciation of the problems encountered by our industry as they pertain to Workmen's Compensation.

We wish to record our appreciation for the continuing interest of the Board in safety matters, particularly in the relationship and rapport that exists between the Board and the Construction Safety Association of Ontario, which, governed by a construction industry Board of Directors, is doing a tremendous educational job in order to cut the accident rate, thereby reducing overall costs in assessment to the construction employer. We submit that the Construction Safety Association's effectiveness lies in its voluntary nature and the employers' involvement. We recommend that no further legislative restrictions be placed upon the operation of this association, and we affirm that employers should continue to have a primary voice in its affairs.

We appreciate your indulgence in the discussion of the following subjects:-

1. Classification and Rate Structure Review

With the rapid change in construction technology which requires an increasing number of "specialists" on the construction site, it is our

opinion that the present classifications and the rate structure are outmoded when applied to modern construction methods. For example, on a single project an employee working for a single employer, at a single rate of pay (a union trade), exposed to similar risks, performs activities which have rates varying as much as 1000%. It is therefore recommended that there be a general review of the work classifications and the rate structure.

2. Increased Compensation in respect of Past Accidents

We feel it important to bring to your attention the recommendations made by The Hon. Mr. Justice W.D. Roach in his report on the Workmen's Compensation Act, May 31st, 1950. He cogently stated as follows:-

"In my very respectful opinion, it is an error to provide that additional moneys necessary to provide for the increase in respect of past accidents should be levied and collected from the employers. Such a provision was entirely contrary to the spirit of the Act and violated one of its fundamental principles. The compensation for which the Act provides must be regarded for what it is and has always been intended to be, namely, a debt owing by industry to the injured workman or his dependants. It is proper to measure that debt at the time of the accident by whatever standard the law then specifies. When the debt is thus measured or evaluated and that measure is paid, industry should thereby be fully released. If, in the course of time, due to changes in our social thinking, or to changed economic conditions, it should be concluded that the standard of measurement should be altered, the debt should not be resurrected and re-measured by some new standard. There should be finality to it. Without such finality industry can never know what its liabilities are. The ownership of industry is constantly changing. ----- The main reason advanced for increasing pensions which have been awarded in respect of past accidents is that due to changed economic conditions they are found to be inadequate. If the workman or his dependants are thus adversely affected by changed economic conditions and require assistance, the burden of providing such assistance should be borne by society as a whole and not by one group of society, in this case, industry. Industry

discharged its debt by the standard which the law prescribed when the accident happened and the amount which was then paid was considered adequate. It is the lessening of the purchase value of our currency and the consequent increase in the cost of living that later made it inadequate. That is a condition of general application. It applies to all persons who for any reason are in a position of having to live on an income fixed in past years. ----- For the reasons which, perhaps at too great length, I have attempted to make clear, I recommend that section 33 (now 35) be deleted from the Act and that in its stead a provision be inserted as a result of which, from the date upon which such a provision shall become operative, the additional moneys necessary to provide for any increase in compensation in respect to accidents which occurred prior to the increase authorized by the Act shall be paid by the Government to the Board out of the Consolidated Revenue Fund."

It should be noted that from 1914 to 1922, as contained in his report, the Ontario Government paid to the Board the total sum of \$652,275.28, and since 1922 nothing has been paid to the Board by the Government. The result has been that since 1922 the whole cost of administration of the Act has been paid by the industries and businesses covered by the Act. The public has paid nothing on that account except to the extent that those industries and businesses have succeeded in recouping themselves by adding to the selling price of the products which they produced or the services which they provided.

We fully support the recommendations made by Mr. Justice Roach and recommend strongly that reconsideration be given to deleting Section 35 and provide instead, that additional moneys necessary to up-grade compensation benefits which occurred prior to the increase authorized by the Act should be paid by the Government to the Board out of the Consolidated Revenue Fund.

3. The Workmen's Compensation Board Appeal Structure

We would refer you to the appeal structure of the Workmen's Compensation Board (see Appendix "B") which shows the various levels through which

an appeal must go, beginning with Administration to a Review Committee to an Appeal Tribunal and finally to the Board. The industry feels that the appeal structure is in its present state entirely too cumbersome. It should be noted, too, that members of the appeal committees are presently drawn from the administrative staff of the Board itself.

The problem arises in the present appeal procedure as to whether there may be a tendency for a Review Board or Appeal Tribunal to support previous decisions rendered since all appointees are chosen from the original administrative branch of the Workmen's Compensation Board.

It is felt that the Review Committee should consist of outsiders appointed in the same manner as arbitration boards. It is obvious that from such appointments there are many advantages. It is our understanding that the B.C. Legislation which was amended in 1965 seems to be more effective because the Review Committee does consist of persons from without the Board.

We respectfully point out that in the International Labour Conventions and Recommendations, Recommendation #23 relating to jurisdictional disputes concerning workmen's compensation states that such disputes turn not only on the interpretation of the laws and regulations but also on questions of an occupational character requiring a thorough knowledge of working conditions. It recommends that every dispute relating to workmen's compensation should be dealt with by a special court or board of arbitration comprising, with or without the addition of regular judges, an equal number of employers' and workers' representatives nominated or appointed to act as adjudicators by their respective organizations, or elected by bodies of employers and workmen. Where such disputes are dealt with by ordinary courts of law, the court should be required to hear employers' and workers' representatives as experts in cases involving questions of an occupational character and, in particular, the question of degree of incapacity.

It is our opinion that the question of keeping workmen's compensation out of litigation and the courts is an excellent precept, but in terms of justice and equity an appeal should be made to a tribunal or body

other than the tribunal making the original decision, and we do not feel that such steps would necessarily destroy any administrative acts of workmen's compensation but rather enhance the operations of this quasi-judiciary body.

4. Waiting Period

Section 3 of Part Ia of the Act under "Compensation" provides for compensation to be paid to a workman except where the injury does not disable the workman for a period of at least three calendar days from earning full wages at the work at which he was employed.

We note that in the inquiry of the 1950 report, Mr. Justice Roach recommended that the appropriate section of the Act at that time be amended to read as follows: "... does not disable the workman for the period of at least four working days from earning full wages at the work at which he was employed. 'Working days' shall include all holidays for which the workman if uninjured would be paid without working." In his report Mr. Justice Roach stated that there should be some waiting period, and if the disability extends beyond that period, compensation should be payable from the date of the accident. The question of malingering arose in his report and is one which concerns us as construction employers. The waiting period under the present Act can include two non-working days, that is, Saturday and Sunday, and since the Act is designed to compensate an injured workman for loss of earnings, it is felt that the present section of the Act where the words "calendar days" are used should be changed to "working days", and the three days increased to four working days.

Therefore, we recommend that Section 3, Part Ia of the Act should be changed to read as follows: "... does not disable the workman for a period of at least four working days from earning full wages at the work at which he was employed."

5. Compensation Claims

In surveying the construction industry and contractors' operations, we have continually run up against the complaint of suspicion of fraudulent claims being made and of situations occurring where compensation is

claimed and payments being made to workmen who are not actually injured to the extent to which they appear to be and employees suffering from compensable injuries, being away for periods inordinately longer than appears to be warranted by the nature of the injuries.

While we are not in a position to quote statistically what percentage of total accident experience is considered to be fraudulent or inordinately longer compensation payments are made and define it in qualitative or quantitative terms, we feel that as a result of the number of complaints made (even with the reluctance to have company records revealed) that the problem is worthy of note by you as Commissioner of this inquiry.

In many instances and large number of cases, back injuries or other sicknesses where compensation is paid, makes it extremely difficult to have clear cut medical recommendations made. The increase in back injuries, for example, seems to have a direct relationship to the completion of a construction project and the approach of winter months. We know that it is rather difficult to prove that some of the claims for compensation that are paid for so-called injuries are not valid claims. These cases are even more elusive than to other concerns such as manufacturing. Management of manufacturing generally have a complete accident record of employees since the employees are permanent and generally have considerable seniority. Also, the employer in manufacturing, aided with the employee's complete accident record, is better able to pinpoint possible fraudulent cases and make representations to the Workmen's Compensation Board accordingly.

However, in the construction industry, as outlined in Appendix "A", the construction employer is constantly hiring employees who have just finished working for a different contractor in the area. There is a great lack in that the employer does not have the total picture of the man's injury record. It seems that in such a situation the only agency which can see the picture as a whole is the agency which is processing or reviewing the employee's file at the Workmen's Compensation Board. Certainly it would seem invaluable if a system were instituted whereby an employee who had a record of compensable injuries carried with him a

medical certificate or book. The employer could then provide suitable work and the extra supervision required to prevent further injuries. To offset any feeling that this would work against the interests of the employee in obtaining work, it is respectfully suggested that should an injury recur, consideration be given to the proper assessment of the injury against the records of the employer where the original injury occurred.

There have been reports of situations occurring where employees suffering from compensable injury have been away for periods longer than appear to be warranted by the nature of the injuries. While it is agreed that the Act provides that the employer where he is not satisfied can insist on a medical examination of the workman by a company appointed doctor, it is felt that this arrangement is not too satisfactory and that some alternative procedure is called for which will eliminate unnecessarily extended time off work.

A further situation which occurs is when an employee now working for another company will claim compensation in respect of an injury which occurred during previous employment and for which the original employer is assessed. What steps are taken to ensure that the subsequent complaints are thoroughly checked where reasonable doubt may exist before further compensation is paid? Is there any record which indicates that an individual is the subject of numerous claims for compensation?

It is respectfully suggested that if it can be established that compensation has been paid on the basis of false claims, appropriate penalties should be imposed on the claimant, and we feel that the Workmen's Compensation Act should adequately provide for penalties in such instances.

We wish to quote for your information Section 21, Subsection 1, of the Act, as follows:- "Subject to subsection 5, compensation or medical aid is not payable unless notice of the accident is given as soon as practicable after the happening of it and before the workman has voluntarily left the employment in which he was injured and unless the claim

for compensation or medical aid is made within six months from the happening of the accident or, in case of death, within six months from the time of death."

Subsection 5 says:- "Failure to give the prescribed notice or to make such claim or any defect or inaccuracy in a notice does not bar the right to compensation if in the opinion of the Board the employer was not prejudiced thereby or, where the compensation is payable out of the accident fund, if the Board is of opinion that the claim for compensation is a just one and ought to be allowed.

This section of the Act is ambiguous in that it cancels out the importance and intent of the original concept of reporting accidents. In many instances the employer's first knowledge of the accident will occur when he receives notification from the Workmen's Compensation Board that a former workman has applied for workmen's compensation and which will be assessed against his company, and he is asked by the Board whether he intends to contest the workman's claim. To do this, the employer is required to fill in the Workmen's Compensation Board Form 7 "Employer's Report of Accident or Industrial Disease".

The construction employer has great difficulty after a time lapse in researching and finding out if in fact an accident did occur, and all too often the time element and the mobility and replacement of the work force is such that no record is available, and consequently no contest offered to the injured workman's claim.

This immediately raises a suspicion as to whether in fact an accident did occur. It could be that the injury, particularly a back injury, might have occurred in the evening during pleasurable pursuits outside of working hours, such as pushing a car to start it or digging in the back garden. It would appear that in view of the trend to a shorter working week and more leisure time, the incidence of injuries occurring during non-working hours should be investigated and procedures set up to ensure that disabilities arising during the course of leisure activities be distinctly defined and separated from construction disabilities.

The encouragement of such claims without reporting accidents to an employer is spelled out in the Workmen's Compensation Act to the detriment of construction management as follows:

Paragraph 2 of Section 3 provides:- "Where the accident arose out of the employment unless the contrary is shown, it shall be presumed that it occurred in the course of employment and, where the accident occurred in the course of employment, unless the contrary is shown, it shall be presumed that it arose out of the employment."

We strongly recommend that this presumption should immediately be removed from that section of the Act and be replaced with wording which will provide that it is incumbent upon the workman to report the accident to his employer as soon as practicable after its occurrence and before his compensation claim is even considered. Also, Form 7 of the Workmen's Compensation Board should provide for more information from the employer with respect to the accident, the report of the injured employee, and names of witnesses to the event, if any. It is our feeling that Form 7 as presently constituted does not possibly provide sufficient information to the Board to consider a claim on the basis of information presently provided by management. We feel that in the light of the foregoing this is a very necessary requirement for the protection of construction employers.

We believe there should be a medical certificate, record or book provided employees by the Workmen's Compensation Board which could alert contractors regarding accident prone employees who are having continuous injuries and accidents that indicate a specific pattern. We feel that this would help prevent accidents in that the employer could provide sharper supervision in such cases. Also, the matter would be greatly assisted if the appeal procedure were amended as recommended earlier in this brief and provide the machinery whereby an employer could launch a complaint after which an independent committee could render a more objective decision. It is our belief that this kind of appeal procedure would also encourage the family doctor to perhaps make more responsible recommendations as to the expected time the individual will be laid up.

6. Rehabilitation

The inquiry should look closely at the operation and facilities and procedures provided for rehabilitating and hastening the return of an injured workman to a useful role in society. It appears that if a man with a disability is directed to get light work, there might be some need for a form of re-training or direction to a re-training programme or that light work might be necessary until the person has re-gained a degree of fitness to resume the form of duties which was his occupation prior to his injury.

As things presently stand and because of the nature of construction industry, it is not always possible for a construction employer to re-hire a disabled workman. Example, the construction project may be completed by the time the disabled workman is able to take up his duties. Also, in view of the fact that the contracting agency all too often is the trade union, the contact with a disabled employee is lost once that employee has gone on workmen's compensation other than a permanent employee of a construction employer.

We wonder how realistic it is to expect that the construction industry can provide jobs that can utilize a man who is 50-75% incapacitated even if this is only on a temporary basis. This seems to be an area where there should be some liaison by the Workmen's Compensation Board with the company, the Department of Education if re-training is required, the Unemployment Insurance Commission, and the specific craft union if the employee is a member. There seems to be a need to provide an incentive for an employee to return to work as quickly as possible. It would appear that in other Provinces, Compensation Acts have stressed the need of estimating how long it will take the employee to become completely rehabilitated. Once this has been established, they taper off the percentage of compensation to which he is entitled so that instead of going from 100% to nothing, there is usually a three to four month period whereby the employee is on a 50% compensation allowance and therefore has an incentive to find work.

We would point out that the workman, while receiving 75% of his average earnings, is not called upon to pay income tax or such other expenses as unemployment insurance, medical, hospital, and other costs related to normal employment. It is possible for a workman on partial disability to add sufficient earnings to his compensation to place him at a greater economic advantage than would a quick return to full employment. We feel there is a time when a legitimate period for compensation must end and when (if work is unavailable) unemployment insurance benefits apply. It would seem that under existing practice, the terminal date for compensation and the commencement of unemployment insurance is an area which should be researched by this inquiry. We also feel that the question of compensation (which in fact is a replacement of wages) should be reported as income as the employer is providing these moneys through the Board. We would recommend that the inquiry research this area extensively and recommend to the appropriate body that the amount of compensation paid by the Board be reported to the Department of Internal Revenue.

We are concerned with three things: One, the return of the man to a useful occupation in society; two, liaison being maintained throughout the disability period; and three, the reduction of costs of assessment.

7. Medical Costs

It has been suggested by some construction employers that with the introduction of QMSIP (the Provincial Government medical plan), that there could be a reduction in medical costs as they now apply to the Workmen's Compensation Board. We are not clear how much QMSIP coverage there is of workmen in construction, but medical costs do constitute a considerable percentage of the total assessment.

8. Pensions and Retirement

Now that the Canada Pension Plan has been introduced and its related social security schemes will gradually go into effect over the next few years, the inquiry should study the relationship between Canada Pension Plan payments and pensions under workmen's compensation when workers

reach the retirement age. Because conditions of society change during the years, this new situation is one for which we feel an adjustment is necessary.

9. Commutation of Payments

Section 27, subsection 1, of the Act says:- "Where the compensation is payable by an employer individually or out of the accident fund, the Board may commute the weekly or other periodical payments payable to a workman or dependant for a lump sum, and may charge the same to the employer or to the accident fund, as the case may be."

One of our association members has suggested that where the commutation of periodic payments for permanent disability is made, the charge against the employer's company record is made on a lump sum basis in the year in which the commutation was made. It is suggested that where such a lump sum commutation is made, the charge to the company record should be pro-rated over the same period as the commutation. Since the advent of the double assessment aspect of the Act, the charge of a lump sum payment in one year could show the company to be in a deficit position.

10. Liability of Principal to Pay Assessments

Section 10 of the Act provides for liability and reimbursement to the Board by the principal in the event of non-payment. It should be noted that in construction, a principal contractor, before final payment of the holdback, is required to produce a Workmen's Compensation Board certificate which shows that he is in good standing with the Board as far as payment of compensation is concerned. In addition, and to protect himself, the principal contractor requests a similar certificate from the Board to ensure that the subcontractors are in good standing with the Board. In view of the collection of compensation on an annual basis, the Board while issuing the certificate of good standing, is not really in a position to state whether the contractor or subcontractor is in fact in good standing with the Board until the annual payment is made. As a consequence, and because of the liability of the principal under this section of the Act, claims can be made on the principal for non-payment, and the Board has many times exercised its prerogative in this respect.

We respectfully suggest that the inquiry look into the aspects of this section in order to determine what procedures can be set up which will protect the interests of the principals so that they are not saddled with a liability which they cannot conceivably control. In fact, the onus of responsibility for non-payment should rest with the Board.

SUMMARY OF RECOMMENDATIONS

1. We recommend that no further legislative restrictions be placed on the operations of the Construction Safety Association. We affirm that employers should continue to have a primary voice in its affairs. (Ref. page 2).
2. It is recommended that there be a general review of the work classifications and the rate structure. (Ref. pages 2 and 3).
3. We recommend that consideration be given to deleting Section 35 from the Workmen's Compensation Act and providing instead that additional moneys necessary to upgrade compensation benefits which occurred prior to the increase authorized by the Legislature be paid by the Government to the Board out of the Consolidated Revenue Fund. (Ref. pages 3 and 4).
4. It is recommended that every dispute relating to workmen's compensation should be dealt with by a special court or board of arbitration. The board shall comprise, with or without the addition of regular judges, an equal number of employers' and workmen's representatives nominated or appointed to act as adjudicators by their respective organizations, or elected by bodies of employers and workmen. Such adjudication of matters should replace the existing appeal procedure of the Board. (Ref. pages 4-6).
5. We recommend that Section 3, Part Ia of the Act should be changed to read as follows:- "... does not disable the workman for a period of at least four working days from earning full wages at the work at which he was employed." (Ref. page 6).

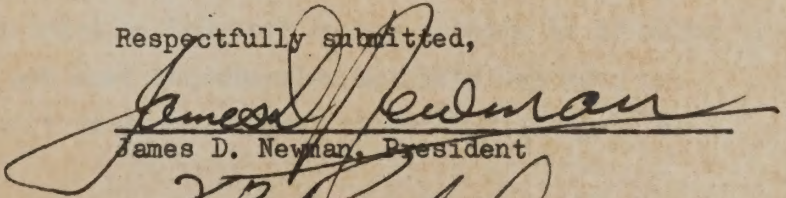
6. It is respectfully suggested that if it can be established that compensation has been paid on the basis of false claims, appropriate penalties should be imposed on the claimant, and the Workmen's Compensation Act should adequately provide for penalties in such instances. (Ref. pages 6-8).
7. We recommend that Section 21, subsection 5, be deleted and the presumption in paragraph 2 of Section 3 reviewed and the Act contain wording which will provide that it is incumbent upon the workman to report an accident to his employer as soon as practicable after its occurrence and before his compensation claim can be considered. (Ref. pages 8-10).
8. We recommend that the Workmen's Compensation Board should alert contractors regarding employees who are having continuous and repetitious injuries, particularly those involving the type of accident which indicate a specific pattern, in order to provide for sharper supervision in the future. This could be in the form of a medical certificate or book. (Ref. pages 7-10).
9. We recommend that the inquiry study the question of defining injuries which occur during leisure hours and those injuries which occur during employment. (Ref. Page 9).
10. We recommend that the inquiry look into matters of rehabilitation to facilitate a return to work of a workman as soon as possible, and also look into the means of providing incentives for an employee to return to work. We recommend the establishment of a liaison between the Board, the company, the Department of Education (if re-training is required), the Unemployment Insurance Commission and the specific craft union (if an employee is a member) to expedite a return to work. (Ref. page 11).
11. We recommend that Form 7 of the Workmen's Compensation Board should be reviewed so that it will provide more information to the Board in order to adequately consider a claim. (Ref. page 10).
12. We recommend that the inquiry investigate the possibility of reducing compensation allowance in order to provide incentives for a workman to return to a useful role in society and, also, provide procedures which will determine the terminal date for compensation and the commencement for unemployment insurance when no work is available. (Ref. page 12).

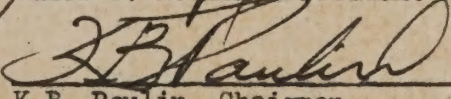
13. We recommend that the inquiry research the practicability of having the amount of compensation paid by the Board reported to the Department of Internal Revenue. (Ref. page 12).
14. It is recommended that there be research to determine if OMSIP (where an employee is covered) could incur the medical expenses involved in a compensable injury. (Ref. page 12).
15. We recommend that the inquiry study the relationship between Canada Pension Plan payments and pensions under Workmen's Compensation when workmen reach retirement age. (Ref. pages 12 and 13).
16. It is suggested that where lump sum commutations for compensable injuries are made, that the accounting charge on the company's records be prorated over the same period as the commutation. (Ref. page 13).
17. We recommend that the inquiry review all aspects of Section 10 of the Act to determine what procedures can be set up which will protect the interests of the principals so that they are not saddled with a liability over which they have no control. (Ref. page 13).

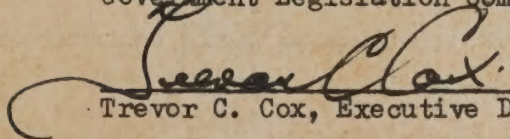
We believe, Mr. Commissioner, that these recommendations are in the interest of workmen's compensation, its operations, and we would be very pleased to have further discussion on the subjects outlined in this brief and on other matters relating to the construction industry at your pleasure.

In closing we wish to record the Federation's appreciation of the invitation to present this submission, and trust that we will be of continuing service to this and future inquiries into workmen's compensation.

Respectfully submitted,


James D. Newman, President


K.B. Paulin, Chairman,
Government Legislation Committee


Trevor C. Cox, Executive Director

THE SIZE, SCOPE, NATURE AND IMPORTANCE OF
THE CONSTRUCTION INDUSTRY IN ONTARIO

The construction industry is Canada's largest and operates in all sections of the nation. The value of the construction programme nationally is estimated this year to be some \$11 billion. Ontario's construction programme is almost one third of the national programme, and its construction programme in 1966 is expected to be up to the \$3½ billion mark. The number employed directly in construction in 1965 was approximately 210,000 persons (Ontario).

There are shortages of skilled labour which exist generally, and in the last few months shortages of supervisory personnel and even of trained office staff are being felt. Toronto has probably less difficulty than any other provincial centre.

Premium wages are being paid in some areas to secure needed workmen, and some concern is evident about reduced productivity. Some of the problems facing the provincial construction industry are as follows:- Anticipated financing problems in the tight money market, a need for better long range construction planning and scheduling to even out some of the ups and downs of construction activity, and a growing disparity between contractors with union and non-union labour.

The role of the construction industry in our economy is of major importance, but we would point out that construction activity has many unusual features which distinguish it from other forms of production, particularly manufacturing.

A study prepared for the Royal Commission on Canada's economic prospects points out that the construction industry is unique in producing goods which cannot be transferred from one place to another. Therefore,

construction activity cannot be concentrated in any small area -- although there is some concentration of construction projects -- but must be as dispersed as the needs which arise for it.

It is this geographical aspect which sharply differentiates construction from manufacturing. In manufacturing the plant and the workers remain where they are while the products move. In contrast, it is the product of construction which remains a permanent feature of the landscape while the plant and the workers move. In another sense construction is very similar to agriculture: it is carried on everywhere by a multitude of small units and is affected by the weather in a like manner.

Because the place of employment is continually shifting, there are no two situations which are identical. Jobs are usually of a limited duration. It is common knowledge that contractors are continuously in the process of creating or dispersing job and working crews with the exception of a limited number of key and supervisory personnel. Also, the opportunities for jobs vary a great deal, both geographically and seasonally, and the work force moves around within localities and between geographic areas.

There are no strong ties to particular employers as there is in manufacturing. Because of the nature, diversity and market of construction, there is an irregularity of employment. It is subject to fluctuations, cyclically with contractual and seasonal fluctuations. Weather conditions, too, from time to time will force the suspension of work in many of the trades..

The nature of its products and the product market require a great deal of flexibility and a high degree of mobility. It operates on specialization which is reflected in the organization of construction companies by specialty trades and parallel organization of the work force by craft unions. Contracting employers in the industry may be divided into the following:-

- (a) General contractors who undertake the construction of large projects or parts thereof.

- (b) Trade subcontractors who may work either as subcontractors for a general contractor or who may be directly employed by the owner of a project.
- (c) Specialty prime contractors who are usually directly employed by the owner of the project but who may in some cases be engaged by a general contractor as a trade subcontractor.
- (d) Owners acting as contractors for their own projects.

The degree to which the general contractors sub-contract their work will vary in different branches of the industry and between different firms in the same branch. The trend has been to subcontract almost all of the work except perhaps in some instances the general trades of masonry, carpentry and concrete form work.

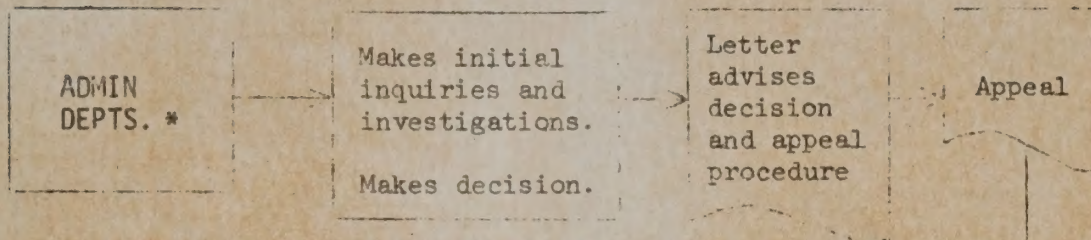
The subcontracting system which is predominant in the industry complicates its structure in terms of numbers. There are as many types of trade or specialty contractors as there are trades, and in the large centres the number is multiplied many times because of further subdivision and specialization. The Toronto Construction Association lists over 100 different types of trades in its directory. There can be instances where the subcontractors may supply only labour, or only labour and equipment, or may be responsible for all the labour, equipment and materials on their sub-contract. In turn, the mechanical trades (particularly) may subcontract part of their work.

In the house and apartment building area of the industry it is not uncommon for subcontractors to set up some of their own employees as sub-subcontractors on a piecework basis. In heavy engineering construction the contractor himself may account for 80 to 90 per cent of the work. In commercial and industrial building the general contractor would subcontract perhaps up to 80% of the work and the house builder almost the whole of it.

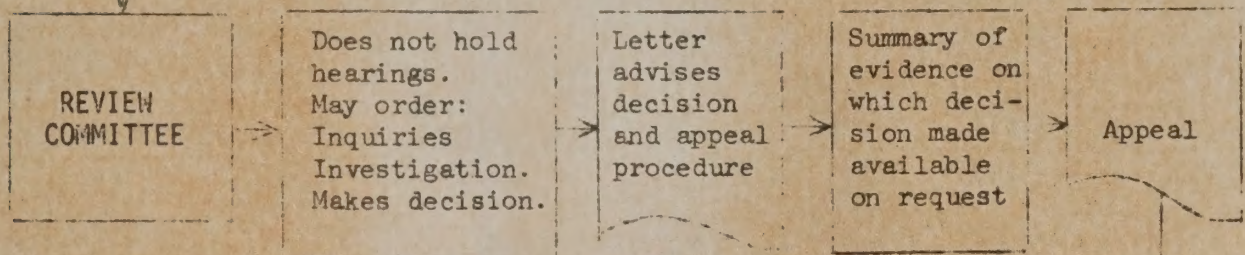
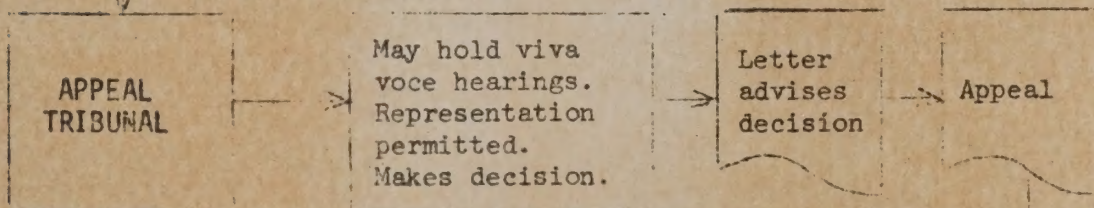
The construction industry has been described in many forms. One, as a group of related firms whose principal common denominator is the employment of the same labour force. The peculiar features of the industry,

the basic need for an available pool of skilled labour and the unstable employment relationship account in large part for many of the problems which are likely to develop, and highlight the need for special consideration to this industry when reviewing workmen's compensation.

It should be recognized that in most instances, particularly in industrial and commercial construction, unions are contractors for the supply of labour in the industry and are a natural monopoly in the employment of construction labour. We feel these points must be kept firmly in mind when reviewing some of the aspects and recommendations we made in the brief with respect to workmen's compensation.

APPEAL STRUCTURE1st Level Administrative Departments

*Assessment, Claims, Medical & Rehabilitation matters

2nd Level Review Committee3rd Level Appeal Tribunal4th Level The Board